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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 CHRISTOPHER L. LARSEN,

11 Plaintiff,

12 v.

13 NANCY A BERRYHILL, Acting  
14 Commissioner of Social Security,

15 Defendant.

CASE NO. 3:16-CV-05654-DWC

ORDER ON MOTION FOR  
ATTORNEY'S FEES

16 Plaintiff Christopher L. Larsen filed a Motion for Attorney's Fees and Expenses pursuant  
17 to 28 U.S.C. §2412 ("Motion"), seeking attorney's fees pursuant to the Equal Access to Justice  
18 Act, 28 U.S.C. § 2412 ("EAJA"). Dkt. 23. Defendant objects to the Motion, contending the  
19 amount of hours expended in this case was excessive and therefore the requested fee award is  
20 unreasonable. Dkt. 24.

21 The Court concludes the amount of attorney hours expended in this case was  
22 unreasonable. Accordingly, Plaintiff's Motion is granted-in-part and the fee request is reduced by  
23 7.3 hours. Plaintiff's request for an additional 3.3 hours expended in defending this Motion is  
24 granted.

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On July 28, 2017, Plaintiff filed this Motion. Dkt. 23. Defendant filed a Response, Dkt. 24, and on August 18, 2017, Plaintiff filed a Reply. Dkt. 25.

In any action brought by or against the United States, the EAJA states “a court shall award to a prevailing party other than the United States fees and other expenses . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). According to the United States Supreme Court, “the fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). The government has the burden of proving its positions overall were substantially justified. *Hardisty v. Astrue*, 592 F.3d 1072, 1076 n.2 (9th Cir. 2010) (citing *Flores v. Shalala*, 49 F.3d 562, 569-70 (9th Cir. 1995)). Further, if the government disputes the reasonableness of the fee, it also “has a burden of rebuttal that requires submission of evidence to the district court challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party in its submitted affidavits.” *Gates v. Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1992) (citations omitted). The Court has an independent duty to review the submitted

1 itemized log of hours to determine the reasonableness of hours requested in each case. *See*  
2 *Hensley*, 461 U.S. at 433, 436-37.

3 This case was remanded to the Administration for further consideration. Dkt. 20. As  
4 Defendant does not contend her position was substantially justified, the Court finds Plaintiff is  
5 entitled to a reasonable attorney's fee award under the EAJA. *See* Dkt. 24.

6 While Defendant does not challenge an award of reasonable attorney's fees or the hourly  
7 rate requested, she argues the number of hours expended on this litigation was unreasonable. *See*  
8 *id.* Defendant maintains Plaintiff's request for \$9,175.87 in attorney's fees should be reduced to  
9 either \$7,500 or by 10.9 hours (for a total fee of \$7,040.01). *Id.* at 1-2, 7. Once the Court  
10 determines a plaintiff is entitled to a reasonable fee, "the amount of the fee, of course, must be  
11 determined on the facts of each case." *Hensley*, 461 U.S. at 429, 433 n.7. "When the district  
12 court makes its award, it must explain how it came up with the amount. The explanation need not  
13 be elaborate, but it must be comprehensible. As *Hensley* described it, the explanation must be  
14 'concise but *clear*.'" *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008)  
15 (emphasis in original, citations omitted). "[T]he most useful starting point for determining the  
16 amount of a reasonable fee is the number of hours reasonably expended on the litigation  
17 multiplied by a reasonable hourly rate," which encompasses the lodestar method.<sup>1</sup> *Hensley*, 461  
18 U.S. at 433, 435.

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21 <sup>1</sup> Relevant factors which may be considered are identified in *Johnson v. Georgia Highway Exp., Inc.*, 488  
22 F.2d 714 (5th Cir. 1974), as: (1) The time and labor involved; (2) the novelty and difficulty of the questions  
23 involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the  
24 attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time  
limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the  
experience, reputation, and ability of the attorneys; (10); the 'undesirability' of the case; (11) the nature and length  
of the professional relationship with the client; and (12) awards in similar cases. *Johnson*, 488 F.2d at 717-19  
(citations omitted); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975) (adopting *Johnson* factors).

1 Plaintiff seeks payment of \$9,175.87 for 44.9 hours of time his attorney – Eitan Yanich  
2 (“Eitan”) – and another attorney – Noah Yanich (“Noah”) – spent on file review, the Opening  
3 Brief, and the Reply Brief for this case.<sup>2</sup> Dkt. 23. This time includes 25.8 hours Noah spent  
4 reviewing the file and drafting the Opening Brief, and an additional 10.3 hours Eitan spent  
5 reviewing the file and drafting, editing, and filing the Opening Brief. Dkt. 23-3, p. 1. In total, the  
6 attorneys spent 36.1 hours preparing the Opening Brief. *See id.* The remaining 8.8 hours were  
7 expended on the Reply Brief and case administrative details. *See id.* at 1-2. Plaintiff also requests  
8 \$5.81 in expenses and \$380 for paralegal time, neither of which Defendant contests. Dkt. 23-3,  
9 pp. 1-2; Dkt. 24, p.1 n.1.

10 Defendant argues the Court should reduce Plaintiff’s fee request because the attorney  
11 hours expended on this case were unreasonable. Dkt. 24, pp. 2-8. Specifically, Defendant  
12 maintains Eitan unreasonably duplicated Noah’s work by spending additional time on the  
13 Opening Brief; the case was “‘routine’ rather than complex,” therefore necessitating less time;  
14 and the size of the transcript – 1,578 pages – did not justify the amount of hours spent on the  
15 case. *Id.* at 4-7. Plaintiff responds that the work between Eitan and Noah was not duplicative;  
16 each Social Security case is unique and thus, there is no “routine” case; and the transcript was  
17 larger than an average transcript and therefore necessitated more time for the case. Dkt. 25, pp.  
18 3-7. In determining whether the hours expended were reasonable, this Court will consider: (1)  
19 awards in similar cases; and (2) the novelty and difficulty of the questions involved in this case.  
20 *See Hensley*, 461 U.S. at 429-30 n.3; *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 717-  
21 19 (5th Cir. 1974).

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24 <sup>2</sup> The Court acknowledges that referring to the attorneys by their first names is less formal. However,  
because the attorneys share a last name, the Court uses their first names in this Order for ease of readability.

1 First, attorney's fee awards in similar cases show the hours expended drafting the  
2 Opening Brief were above average compared to similar cases within the Western District of  
3 Washington. *See e.g. Fisher v. Colvin*, Case No. 2:15-CV-716-DWC (W.D. Wash.) (1,434 page  
4 transcript and 7 hours to review and draft opening brief); *Justice v. Colvin*, Case No. 3:14-CV-  
5 6001-DWC (W.D. Wash.) (20.5 hours for reviewing and drafting opening brief); *Givens v.*  
6 *Colvin*, Case No. 3:15-CV-5199-DWC (W.D. Wash.) (transcript of 920 pages, 26.9 hours to  
7 prepare an opening brief); *Spencer v. Colvin*, Case No. 2:15-CV-20-JRC (W.D. Wash.)  
8 (transcript of 983 pages, fee petition requested 15.7 hours for file review and drafting opening  
9 brief); *Moore v. Colvin*, Case No. 2:15-CV-360-JRC (W.D. Wash.) (7.6 hours for file review and  
10 drafting of the opening brief); *Sampson v. Colvin*, Case No. 3:14-CV-5825-JRC (W.D. Wash.)  
11 (12.5 hours for file review and drafting of the opening brief). In the above cases, the mean time  
12 spent drafting an opening brief was 15 hours. Plaintiff's attorneys spent more than twice as much  
13 time – 36.1 hours – preparing the Opening Brief than what was reported in similar cases.

14 Second, the questions in this case were not novel or difficult, and therefore did not justify  
15 an increase in the expended hours. Plaintiff presented three assignments of error in his Opening  
16 Brief, alleging the ALJ erred in assessing: medical opinion evidence (including new evidence  
17 submitted to the Appeals Council), Plaintiff's credibility, and Plaintiff's RFC (and thus, the Step  
18 Five finding). *See* Dkt. 13. These issues are commonly raised in Social Security cases and should  
19 require less time on legal research to effectively litigate.

20 Plaintiff argues this case took more time because the record was voluminous. Dkt. 25, pp.  
21 3-4. The record in this case was 1,578 pages. Dkt. 15. While the record is long, the Court does  
22 not find it was atypical in length. *See e.g. Fisher v. Colvin*, Case No. 2:15-CV-716-DWC (W.D.  
23 Wash.) (1,434 pages); *Givens v. Colvin*, Case No. 3:15-CV-5199-DWC (W.D. Wash.) (920  
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1 pages); *Amirkhanov v. Colvin*, Case No. 2:15-CV-1541-DWC (W.D. Wash.) (1,411 pages);  
2 *Spencer v. Colvin*, Case No. 2:15-CV-20-JRC (W.D. Wash.) (983 pages); *Wall v. Colvin*, Case  
3 No. 3:15-CV-5281-JRC (W.D. Wash.) (2,297 pages); *Webb v. Colvin*, Case No. 3:15-CV-5098-  
4 JRC (W.D. Wash.) (1,263 pages). Moreover, the length of the record does not necessarily result  
5 in a complex case. For the above reasons, the Court does not find this case presents novel or  
6 complex questions.

7         The Court concludes the amount of time expended on this case was unreasonable.  
8 Plaintiff requested a total of 44.9 hours of attorney hours, 36.1 of which were spent preparing the  
9 Opening Brief. Dkt. 23-3, pp. 1-2. The amount of attorney time incurred in preparing the  
10 Opening Brief was more than the amount incurred in similar Social Security cases, and the case  
11 was not novel or complex. The facts, record, and arguments made in this particular case were not  
12 so unusual or complex as to require such a discrepancy from similar cases. Thus, the Court finds  
13 the 36.1 hours expended on the Opening Brief were excessive and unreasonable. The Court  
14 therefore reduces the attorney hours expended on file review and the Opening Brief by 7.3 hours,  
15 for a total of 28.8 hours expended on these tasks. This results in a total of 37.6 attorney work  
16 hours to reach a judgment in the underlying action.

17         Plaintiff also requests an additional 3.3 hours expended in defending this Motion. Dkt.  
18 25-1, p. 3. The Court concludes that this is reasonable. *See Commissioner, I.N.S. v. Jean*, 496  
19 U.S. 154, 157 (1990) (fees for time and expenses incurred in applying for fees were covered in  
20 EAJA cases).

21         Thus, the Court determines that a fee award for a total of 40.9 hours of attorney work is  
22 reasonable. *See Hensley*, 461 U.S. at 434 (the district court should “exclude from this initial fee  
23 calculation of hours that were not ‘reasonably expended’”) (citation omitted); *see also Stearns v.*  
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1 *Colvin*, 2016 WL 730301 (W.D. Wash. Feb. 24, 2016) (finding thirty-five hours for preparation  
2 of opening brief excessive and unreasonable, and reducing by 10 hours).

3 **CONCLUSION**

4 For the above stated reasons, the Court hereby grants Plaintiff's Motion as follows:

5 Plaintiff is awarded \$5.81 in expenses.

6 Plaintiff is awarded \$8,392.07 in attorney's fees, representing 40.9 hours of attorney  
7 work and 3.8 hours of paralegal work, for a total award of \$8,397.88, pursuant to the EAJA and  
8 consistent with *Astrue v. Ratliff*, 560 U.S. 586 (2010).

9 The Acting Commissioner shall contact the Department of Treasury to determine if the  
10 EAJA Award is subject to any offset. If the U.S. Department of the Treasury verifies to the  
11 Office of General Counsel that Plaintiff does not owe a debt, the government shall honor  
12 Plaintiff's assignment of EAJA Award and pay the EAJA Award directly to Eitan Yanich,  
13 Plaintiff's counsel. If there is an offset, any remainder shall be made payable to Plaintiff, based  
14 on the Department of the Treasury's Offset Program and standard practices, and the check shall  
15 be mailed to Plaintiff's counsel, Eitan Yanich, Law Office of Eitan Yanich, PLLC, at 203 Fourth  
16 Avenue E., Suite 321, Olympia, WA 98501.

17 Dated this 22nd day of September, 2017.

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20 David W. Christel  
21 United States Magistrate Judge  
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